

62399

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

2012 NOV -9 PM 1:24

ORIGINAL

CASE NO. ~~3-12CV-4528L~~

DEPUTY CLERK

NT

GERALD STONE,
Plaintiff

v.

UNITED STATES
DEPARTMENT OF JUSTICE,
Defendant

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, GERALD STONE, hereinafter "Plaintiff" and files the following complaint, directed to the UNITED STATES DEPARTMENT OF JUSTICE, hereinafter "Defendant", and for cause of action, would show the Court as follows:

- 1) This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, to order the production of agency records concerning documentation of evidence which Defendant has improperly withheld from Plaintiff.
- 2) This Court has jurisdiction over this action pursuant to 5 U.S.C. § 522(a)(4)(B), the Freedom of Information Act, and 28 U.S.C. § 1331.
- 3) Plaintiff is a citizen of the United States of America.
- 4) Defendant is an agency of the United States and has possession of the documents that Plaintiff seeks.
- 5) On March 12, 2012, Plaintiff made a FOIA request for the records, documentation, and evidence that the Government used at sentencing of Plaintiff in criminal case 04-CR-00318 in the Northern District of Texas on February 1,

2007 regarding the restitution ordered by the District Judge (copy enclosed).

Defendant received the FOIA request on March 12, 2012 via fax, and acknowledged on March 28, 2012 that it had received the request, copy enclosed.

- 6) The District Court Judge ruled that he was ordering restitution under the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3663A.
- 7) Section 3664(e) provides that “the burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government.” Further, when an MVRA victim is identified, the government must prove “the amount of the loss sustained by [the] victim as a result of the offense” by a preponderance of the evidence.
- 8) On April 30, 2012, Defendant wrote that it has no evidence to support the actions of the Government at sentencing regarding restitution.
- 9) On May 12, 2012, Plaintiff filed an appeal to the April 30, 2012 response. The appeal was assigned number 2012-911, copy enclosed.
- 10) On September 24, 2012, Defendant, in a final agency decision under 5 U.S.C. § 552, again stated that it has no evidence to support the order of restitution at sentencing, copy enclosed.
- 11) Plaintiff has a right of access to the requested information under 5 U.S.C. 552(a)(3), and there is no legal basis for Defendant’s denial of such access. It is preposterous that the Government claims that it has no records or evidence. A Grand Jury issued an indictment; where is the evidence used by the Government to secure that indictment? The statute requires proof by a preponderance of evidence in order for the court to order restitution. For the Government to now

say that no such evidence exists leads to only one of two conclusions: (a) a prosecutor went to the Grand Jury with no evidence and allowed a court to accept a guilty plea and sentence defendant with no evidence, or (b) the Government is withholding the evidence requested.

12) Section 3663A(a)(1) does not authorize the court to order a defendant to pay restitution to any person who was not a victim of the offense of which the defendant was convicted. HUD was not the victim of the count of conviction. What evidence was used by the Government to secure restitution to HUD? The Government must be withholding this evidence.

13) Even though restitution was ordered to a victim who was not the victim of the count of conviction, where did the Government prove that HUD ever lost a penny that it could recover by restitution under the MVRA? The Government must be withholding this evidence.

WHEREFORE, Plaintiff requests this Court:

- 1) Order Defendant to provide access to all documents that would be responsive to Plaintiff's initial FOIA request;
- 2) Award Plaintiff costs and reasonable attorney fees in this action, as provided in 5 U.S.C. 552(a)(4)(E); and
- 3) Grant such other and further relief as it may deem just and proper.

Respectfully submitted this 9th day of November, 2012

Gerald Stone

Gerald Stone
4645 OConnor Court
Irving, Texas 75062
469-443-6343



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

SEP 24 2012

Mr. Gerald Stone
4645 O'Connor Court
Irving, TX 75062

Re: Appeal No. AP-2012-02331
Request No. 2012-911
CAS:RRK

Dear Mr. Stone:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to certain records concerning your criminal case located in the United States Attorney's Office for the Northern District of Texas. Specifically, you requested evidence showing physical injury or pecuniary loss to any victim in the case and evidence used to determine that restitution to the victim was proper.

After carefully considering your appeal, I am affirming EOUSA's action on your request. EOUSA informed you that it could locate no records responsive to your request in its files. I have determined that EOUSA's action was correct and that it conducted an adequate, reasonable search for responsive records.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the actions of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod", written over a horizontal line.

Janice Galli McLeod
Associate Director



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

MAY 17 2012

Mr. Gerald Stone
4645 O'Connor Court
Irving, TX 75062

Re: Request No. 2012-911 - AUSA Tammy Reno

Dear Mr. Stone:

This is to advise you that your administrative appeal from the action of the Executive Office for United States Attorneys was received by this Office on May 17, 2012.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2012-02331**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written over a horizontal line.

Priscilla Jones
Supervisory Administrative Specialist

FREEDOM OF INFORMATION ACT APPEAL

Office of Information Policy
United States Department of Justice
Flag Building, Suite 570
Washington, DC 20530

May 12, 2012

I received a letter from the Executive Office for United States Attorneys dated April 30, 2012 in response to my FOIA request dated March 12, 2012. It was assigned your number 2012-911. A copy of my request and your response is enclosed. I am appealing your response as I feel it is non responsive to my request.

I asked for certain information and records that AUSA Tammy Reno used at sentencing in case #04-00318 in the Northern District of Texas. This information, records, documentation, or other evidence included:

- 1) Any evidence that HUD suffered any monetary loss in this case,
- 2) Any evidence that HUD was a statutory victim under 18 USC 3663A(c)(1)(B),
- 3) Any evidence that I was sentenced correctly under 18 USC 3663A(a)(1) since I was not convicted of any HUD related crimes, and,
- 4) Any evidence that AUSA Reno complied with 18 USC 3664(e) by proving the amount of any financial loss to any victim.

I am requesting that the Department of Justice once again search for any information, documents, records, or other evidence that the above information exists. Otherwise, since all the investigation and sentencing occurred in the Northern District of Texas, the above evidence must exist or AUSA Reno allowed me to be sentenced in this case with no evidence that any violation of the Mandatory Victims Restitution Act occurred, which is certainly a violation of Due Process.

I have sent this appeal to the above address on May 13, 2012 by United States Express mail.

A handwritten signature in cursive script that reads "Gerald Stone".

Gerald Stone
4645 O'Connor Ct.
Irving, Texas 75062

telephone: 469-443-6343



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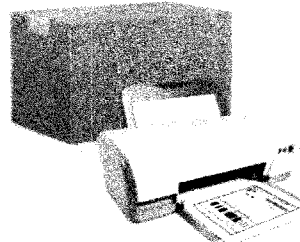
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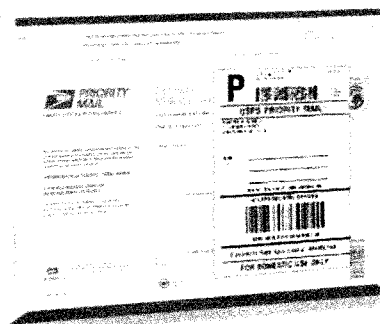
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LOCATION

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FEATURES**Guaranteed By:**
May 15, 2012, 12:00 PM
Proof of DeliveryNotice Left (No
Authorized Recipient
Available)

May 15, 2012, 10:26 am

WASHINGTON, DC 20530

Arrival at Unit

May 15, 2012, 10:19 am

WASHINGTON, DC 20018

Processed through
USPS Sort Facility

May 15, 2012, 8:00 am

WASHINGTON, DC 20074

Processed through
USPS Sort Facility

May 14, 2012, 5:44 pm

COPPELL, TX 75099

Acceptance

May 14, 2012, 12:02 pm

DALLAS, TX 75220

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Executive Office for United States Attorneys
Freedom of Information/Privacy Act Staff
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

Request Number: 2012-911

Date of Receipt: 3-12-2012

Requester: Gerald Stone

Subject: Self (specific records)

Dear Requester:

APR 30 2012

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

1. ☐ A search for records located in this office has revealed no records.
2. ☒ A search for records located in the Northern District of Texas has revealed no records.
3. ☐ The records which you have requested cannot be located.
4. ☒ This office is continuing its work on the other subject/districts mentioned in your request.
5. ☒ This is the final action my office will take on this particular request.

You may appeal my decision that there are no new records available by writing within sixty (60) days from the date of this letter, to:

Office of Information Policy
United States Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal."

After the appeal has been decided, you may have judicial review by filing a complaint in the United States District Court for the judicial district in which you reside or have your principal place of business; the judicial district in which the requested records, if any, are located; or in the District of Columbia.

Sincerely,

Susan B. Gerson
Acting Assistant Director
Freedom of Information & Privacy Staff



Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

Requester: Gerald Stone Request No.: 12-911

Subject: Self (specific records)/TXN

The Executive Office for United States Attorneys (EOUSA) has received your Freedom of Information Act/Privacy Act (FOIA/PA) request. It has been assigned the above number. Please give us this number if you write about your request. If we need additional information, we will contact you within two weeks.

Your request will be placed in the order in which it was received for processing, unless it is a very large request (Project Request). Then, it will be placed in a separate group of Project Requests, which are also processed in the order received.

EOUSA makes every effort to process most requests within a month (20 working days). There are some exceptions; for example, Project Requests usually take approximately nine months to process. Requests for "all information about myself in criminal case files" are usually Project Requests. If you have made such a request, you may either write us and narrow your request for specific items, or you may expect that the processing of your request may take nine months from the date of this letter.

By making a FOIA/PA request, you have agreed to pay fees up to \$25, as stated in 28 CFR § 16.3(c), unless you have requested a fee waiver. Please note that pursuant to 28 CFR § 16.11, if you have not been granted a fee waiver, we are required to charge fees for time used to search for the documents you have requested and for duplication of all pages released to you. Normally, search time is charged at a rate of \$28 per hour after the first two hours which are free, and duplication fees are \$0.10 per page after the first 100 pages which are free. Please do not send any payment at this time! If we anticipate that fees will exceed \$25 or the amount you have stated in your letter (if greater than \$25), we will normally notify you of our estimate of fees. After we have received your agreement to pay for the expected fees (or you have narrowed your request to reduce fees) and we have processed your request, we will require payment for the accumulated charges before we release documents to you. Without such payment, your request file will be closed without further action.

Sincerely,

Susan B. Gerson
Acting Assistant Director

Susan B. Gerson
Acting Assistant Director
United States Department of Justice
600 E St., Suite 7300
Washington, DC 20530-0001

March 12, 2012

I am making this request under the Freedom of Information Act. I am enclosing a copy of my driver's license and a DOJ-361. I am willing to pay up to \$50.00 if the time required to process my request exceeds the free time allowed to individual requesters.

In case #04-00318 in the Northern District of Texas, AUSA Tamara Reno represented the Government. The Government is required to prove by a 'preponderance of the evidence' the amount of loss a victim suffered by the actions of the defendant. (18 USC 3664(e) "Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government"). Also, 18 U.S.C. § 3663A(c)(1)(B) (specifying that the MVRA applies only when "an identifiable victim or victims has suffered a physical injury or pecuniary loss").

U.S. v. Reifler
446 F.3d 65
C.A.2 (N.Y.),2006.

Section 3663A(a)(1) does not authorize the court to order a defendant to pay restitution to any person who was not a victim of the offense of which the defendant was convicted.

Section 3664(e) provides that "[t]he burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government." Id. § 3664(e).

I am requesting any records, documentation, or other evidence that AUSA Reno used to prove that there was any physical injury or pecuniary loss to any victim in this case that was proven by a 'preponderance of the evidence'. I am also requesting any evidence that AUSA Reno used to

determine that restitution was proper to a victim that was not the victim of the offense of conviction (18 USC 666).

United States v. Smith, 156 F.3d 1046, 1057 (10th Cir.1998) (holding that, where the government has not "present [ed] evidence at the hearing concerning the appropriate amount of restitution [,] ... [the] imposition of the [restitution] order constitutes plain error").

I am requesting that this information be sent to me within the statutory time limit. I have faxed this request to DOJ at 202-252-6047, and have sent a copy by US mail, return receipt requested.

A handwritten signature in black ink that reads "Gerald Stone". The signature is written in a cursive, slightly slanted style.

Gerald Stone
4645 O'Connor Ct.
Irving, Texas 75062

telephone: 469-443-6343

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gerald Stone

DEFENDANTS

Department of Justice

(b) County of Residence of First Listed Plaintiff Dallas County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Washington, D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

4645 OConnor Ct., Irving, TX 75062
469-443-6343

Attorneys (If Known)

3-12CV-4528L

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 USC 522Brief description of cause:
failure to comply with statute

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____